

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GUNDERSON, INC., an Oregon
Corporation,

Plaintiff,

v.

DAVIS-FROST, INC., a Minnesota
Corporation,

Defendant.

No. CV 05-699-MO

OPINION re: Bill of Costs

MOSMAN, J.

Plaintiff prevailed in this matter and now seeks its costs in the amount of \$20,730.73. Defendant objects. Because some of Plaintiff's costs do not meet the standards outlined in 28 U.S.C. §1920, the request is GRANTED IN PART AND DENIED IN PART, and Plaintiff is awarded \$18,016.98.

DISCUSSION

Costs are generally available to a prevailing party. Federal Rule of Civil Procedure 54(d)(1) provides that, "costs—other than attorney's fees—should be allowed to the prevailing party." "Rule 54(d) creates a presumption for awarding costs to prevailing parties" *Save Our Valley v. Sound Transit*, 335 F.3d 932, 944-45 (9th Cir. 2003). The court "need not give affirmative reasons for awarding costs; instead, it need only find that the reasons for denying costs are not sufficiently persuasive to overcome the presumption in favor of an award." *Id.* at

945. When the court exercises its discretion to deny costs, it must explain its reasons for doing so. *Id.*

Plaintiff seeks reimbursement for costs associated with (1) fees of the clerk (\$250.00); (2) fees for service of summons and subpoenas (\$55.00); (3) fees of the court reporter (\$12,356.32)¹; (4) fees and disbursements for printing (\$2,454.75); (5) fees for witnesses (\$2,690.91); and (6) costs for exemplification and copies of papers necessarily obtained (\$2,923.75). The total of these costs is \$20,730.73.

I. Fees of the Clerk

I grant Plaintiff's request for fees of the clerk.

II. Fees for Service of Summons and Subpoenas

I grant Plaintiff's request for fees for service of summons and subpoenas.

III. Fees of the Court Reporter

I grant Plaintiff's request for fees of the court reporter.

IV. Fees and Disbursements for Printing

I grant Plaintiff's request for fees and disbursements for printing.

V. Fees for Witnesses

I deny Plaintiff's request for Mr. Ed Hobson's witness fee (\$40.00), which Defendant has already paid. (Decl. of Heather Beasley (#169).) I otherwise grant Plaintiff's request for fees for witnesses.

¹This amount reflects Plaintiff's withdrawal of its request for Kentuckiana Reporters E-transcript fee. (Pl.'s Resp. to Objections (#170) 4.)

VI. Costs for Exemplification and Copies of Papers Necessarily Obtained

I deny Plaintiff's request for the costs of "Trial Graphics of Gunderson Plant Used During Cheryl Lee Urness Testimony" (\$2,314.50) and "Trial graphics: Work on Texanol Charts Used Throughout Trial" (\$359.25), because these costs are not taxable under 28 U.S.C. § 1920(4). I otherwise grant Plaintiff's request for costs for exemplification and copies of papers necessarily obtained.

VII. The Arithmetic

Total requested:	\$20,730.73
Less witness fee:	(40.00)
Less exemplification fee:	<u>(2,673.75)</u>
Total award:	\$18,016.98

IT IS SO ORDERED.

DATED this 30th day of June, 2008.

/s/ Michael W. Mosman

MICHAEL W. MOSMAN
United States District Court